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COMMISSION ON INTERNATIONAL RELIGIOUS FREEDOM

REPORT ON ASYLUM SEEKERS IN EXPEDITED REMOVAL
FEBRUARY 8, 2005

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FELICE GAER: Good morning, ladies and gentlemen. My name is Felice Gaer. I am the Vice Chair of the United States Commission on International Religious Freedom, and I thank you for coming. Today the Commission, as you know, is releasing the findings and recommendations of a report on asylum seekers and expedited removal, which was authorized by Section 605 of the International Religious Freedom Act of 1998.

The Commission is an independent and bipartisan federal agency which was created in 1998 by that Act, and consistent with the language of the preamble of the legislation, the Commission was authorized specifically to appoint experts to conduct a study to advise whether certain legislative changes to asylum, which were enacted in 1996, were impairing America's obligation and our founding tradition of offering refuge to those suffering religious persecution.

The Congress authorized the Commission to appoint experts to examine how the new immigration procedure, which is known as expedited removal, was affecting new asylum seekers, regardless of whether or not the claim was based on religion or race, nationality, membership in a particular group, political opinion or any of the authorized purposes for which a person can seek asylum.

The Commission, in turn, appointed independent experts, and the Commissioners, who consist of nine people appointed by the President, the Senate and the House of Representatives, formed an active subcommittee to liaise with the experts and to visit many of the ports of entry, border patrol stations, asylum officers and detention centers with them.

The Commissioners concur with the findings and recommendations of the experts, who you will hear from this morning. The Commission is convinced that if carried out, these recommendations will allow expedited removal to protect our borders while protecting bona fide asylum seekers. This is what expedited removal was intended to do and this is how it often works.

The Commissioners were concerned to ensure that this process of seeking asylum and of expedited removal is one that makes America secure and that is fair and that is humane. Those were the three overarching issues, and we think that our recommendations are in accordance with that.

The Commission found that there were also a number of serious problems. We looked at four specific questions that were in the legislation that was presented to us, and we did so because there were anecdotal reports of irregularities of reports. The department - the DHS was created. There were also reports of irregularities in INS detention centers as well.

The Commission was given the first and only opportunity to directly observe expedited removal at the ports of entry. No other entity, no other research team, no other body has been given that authority, and we did use it. We received extensive cooperation from governmental agencies in this process, and the Commission has been pleased to bring this report forward to you at this time. We appointed our first expert, Mark Hetfield, to direct the expedited removal study, and you'll be hearing from him later and he will introduce the other experts.

Now it's my privilege to introduce two other Commissioners who are with us here today, and three of the nine Commissioners are with us, and that is Bishop Ricardo Ramirez of Las Cruces, New Mexico, who will describe to you some of the work of the Commission with regard to this study, and then he will be followed by Mr. Michael Cromartie of the Ethics and Public Policy Center here in Washington, who will speak a bit about the conclusions.

Bishop.

BISHOP RICARDO RAMIREZ: I was asked to speak, I suppose, from my personal observations and personal experience and interest in these issues. As part of the study, experts and Commissioners made site visits to inspection and detention facilities in the following areas: Arizona, Atlanta, Chicago, Detroit, Houston, Laredo, Los Angeles, Miami, New York, Newark, Puerto Rico, San Ysidro, San Francisco and Washington, D.C.

During these visits experts and Commissioners met with inspectors, CBP detention officials, ICE asylum officers, USCIS immigration judges, EOIR asylum seekers who have experienced expedited removal proceedings, and nongovernmental organizations. Please allow me to give you some personal reflections and observations, as I was asked to do.

When it was announced that the study was to be done on expedited removal, I immediately volunteered to be part of it. I didn't realize what I was getting myself into - (laughter) - and I think neither do the people on either side of me this morning. But nonetheless, I did have a deep interest in these issues. I had been a member of the Advisory Committee of the State Department on Religious Freedom Abroad, and that was about nine or 10 years ago that we worked on the foundation stone of this Commission. Finally - it did its work and then it went out of existence and then this Commission was formed. I've also been a member of the U.S. Bishop's Migration Committee. I am presently a member of the International Committee of the U.S. bishops.

Besides those involvements, I'm also interested from my personal background. I represent a religious and moral tradition that has generally reached out to asylum seekers and refugees. Very often, churches have been seen and have functioned as sanctuaries. I came from an immigrant family, as so many of you have come. I was deeply impressed during this whole process of these two years with the staff and the experts with whom we have worked. They are the ones that did all the work. We oversaw their work. We made sure that the work was done. We approved the experts. We approved the methodologies, et cetera, that were followed. And so I just want to thank the staff that worked on this, especially Mark Hetfield and Susan Kyle, who worked so hard even last week, working beyond midnight almost every night to make sure that you had this report.

I was deeply moved also by visits to ports of entry, most especially my visit with other Commissioners and experts to Florence, Arizona. And there were three groups that impressed me. One was those that were ready to be removed, that were waiting for the buses in the heat of Arizona, and waiting in a makeshift shelter with outdoor toilets and stuff, and people just waiting in fear, sadness, depression and deep frustration. You could see it in their eyes. Even though they probably knew that I was there in my black clothing and white collar, they didn't even dare look at me at all, so deep was the anger with everything and

everyone.

And then there was the observations that we had with the interviews before the immigration judges, and there we were impressed by how expeditiously the work was done. I timed the time it took a judge to process an individual, and it took less than two minutes per person. They work very expeditiously. But what impressed me in those sessions was the intelligence, the brightness, the knowledge of immigration law of these asylum seekers and refugees, or those being set up or brought to expedited removal process.

What deeply impressed me, however, were the women. As we were going around visiting the cells in the detention facilities, there was one section where it was filled with women, and they reminded me - if you are aware of the Gorman paintings of - the Navajo painter in the Southwest - it reminded me of those women. They were wrapped in blankets because even though it was the middle of summer, they were in air-conditioned facilities, but most of these people aren't used to air conditioning so they were freezing to death and they were all covered with blankets and shivering, and they were all sun-baked. They looked at me with faces of such sadness and deep distress, like let me out of here; how did I get here; I want to go home.

While we have been concerned about asylum seekers and refugees, we have also considered very much the security of our nation. The question, how can we be compassionate to legitimate asylum seekers and still hold to policies and statutes that safeguard our national security?

MICHAEL CROMARTIE: Thank you, Bishop. I'm Michael Cromartie. I've been on the Commission for about - well, since September, and I - after hearing the Bishop, I am reminded that I'm disappointed that I came on that Commission so late, because I would have loved to have been a part of those trips to those detention centers. In all of this study, looking at the empirical evidence, I think it's very important that we not forget the human dimension here, that real lives are at stake and real people are suffering.

So I've only had the privilege of just reading the report but not have had the experience that the Bishop had, and others at this table, who have not only done the empirical research but have also met the people in these detention centers. The Commission of course concurs with the findings and recommendations presented in this study. My comments will be brief, simply because we do need to hear from the experts themselves.

We believe that implementing these recommendations contained in this study

would advance Congress's objective to establish a system which both protects our borders - I want to underline that - it protects our borders but also protects the asylum seekers. These two things do not have to be held in such tension; we can do both. In particular, the Commission hopes that the new leadership at the Department of Homeland Security will act on the study's overarching recommendation that a high-level refugee coordinator - a high-level coordinator office be designated at the DHS and that it be established as soon as possible.

Once that occurs, the Department of Homeland Security will have a forum in which to more effectively tackle these concerns and ensure that expedited removal can coexist with our tradition of allowing those who flee persecution, religious persecution or otherwise, to find refuge on our shores. The data collected in this study answer the four questions about expedited removal posed to the experts by the Congress, but they also pose many more questions other than the four questions addressed here. This study is really only just a beginning. We do not consider publication release to mark the end of the study. It is our hope that the hundreds of pages of data compiled will continue to be reviewed and analyzed by others to provide further guidance on how the process can be improved, and improved in a fair and just manner.

Now, on that note I would like to turn the floor over to the experts, who are here, who conducted this study, who will discuss its findings and most importantly its recommendations.

So, Mark?

MARK HETFIELD: I'm Mark Hetfield. I'm the Director of the Expedited Removal Study at the Commission. As Commissioner Gaer stated, the study found that expedited removal can work under current legislation and that it does work much of the time. But we also identified some serious flaws in the system. These problems need to be addressed if the system is to stop detaining legitimate asylum seekers inappropriately in jails and jail-like conditions and prevent bona fide asylum seekers from being sent back to countries where they could face torture or persecution.

For bona fide asylum seekers, expedited removal closely resembles a board game. Whether or not you are removed to the country which you claim to be fleeing depends not only on the strength of your claim, but also where in the United States you land. It also depends on whether or not you can find a lawyer and which official considers your application.

To talk more specifically about expedited removal and give you a very brief overview of the process, I'd like to invite one of our experts, Charles Kuck, to come to the podium.

CHARLES KUCK: Thank you, Mark. For those of you not familiar with the expedited removal process, and we've thrown that term around quite a bit, it is essentially what it sounds like: you get removed expeditiously from the United States. This happens in the context, until recently, of arrival at a United States airport, and if you don't have the proper documentation, either in the eyes of the customs and border protection folks where you simply don't have the right documents to come to the United States. You are then subject to being put back on an airplane virtually immediately and deported from the United States. That process is called expedited removal. The only way you can avoid being deported is if you have a credible fear of return to the country of origin. When you express this fear it's through an interview process, which other experts will talk about here, then you have the opportunity to be interviewed by an asylum officer, and if found to have credible fear have an opportunity to present your case to a United States immigration judge.

That, in a very brief nutshell, is what the expedited removal process is all about.

MR. HETFIELD: That was brief; thanks. (Laughter.)

MR. KUCK: I could make it briefer, Mark, if you'd like.

MR. HETFIELD: Now, as I said, Congress actually asked us to answer four questions in the authorizing legislation. To give you the first two questions and the answers that we found to them, I'd like to introduce Dr. Allen Keller, another one of our experts.

Dr. Keller?

DR. ALLEN KELLER: Thank you, Mark. Good morning. I know I speak for all the experts when I say it was truly a privilege and an honor to work on this project, and we are grateful to the Commission for their guidance, for their support, and for the opportunity to do this work, and also to Mark for his leadership on this.

So with regards to the first question we were asked to address: are immigration officers exercising expedited removal authority improperly encouraging asylum seekers to withdraw their applications for admission? Department of Homeland Security regulations and customs and border protection procedures and training manuals make it clear to CBP inspectors that the withdrawal of an application for admission is strictly voluntary and must not be coerced in any way. While most officers observed - complied with these procedures, in one port of entry in which the study was done, we observed several instances in which immigration officers improperly encouraged asylum seekers to withdraw their application for admission. However, for the most part this was not the case.

Question number two, are immigration officers exercising expedited removal authority incorrectly failing to refer asylum seekers for a credible-fear interview? Our findings suggest that when procedures are followed, appropriate referrals are more likely to be made. However, we found that there was frequent failure on the part of CBP officers to provide required information to aliens during the secondary inspection interview. For example, in approximately half of the cases that we observed in our study at seven ports of entry across the United States, inspectors failed to convey information to the arriving alien that he or she may ask for protection, or if she or he had a fear of returning home. This common failure frequently occurred in cases which resulted in withdrawal as well as those which resulted in order of expedited removal. Providing this information is essential to the arriving alien as well as being required. We found that the odds of being referred for a credible-fear interview increased seven times when information concerning the right to apply for protection was provided.

DHS regulations state that an immigration inspector must refer an alien for a credible-fear determination if that alien indicates an intention to apply for asylum, a fear of torture, or a fear of return to his or her country. In

accordance with these regulations, nearly 85 percent of arriving aliens observed by the study who expressed a fear of return were in fact referred for an credible-fear interview. CBP guidelines, however, provide the inspector with more discretion than the regulations, allowing the inspector to decline referral in cases where the fear claimed by the applicant appears unrelated to the criteria for asylum. Indeed, in 15 percent of the observed cases when an arriving alien expressed the fear of return to the inspector, the alien was not referred. Moreover, among these cases were several aliens who expressed fear of political, religious or ethnic persecution, which are clearly related to the grounds for asylum. Of particular concern in seven cases, the inspectors incorrectly indicated on the sworn statement that the applicant said that he or she had no fear of return.

While DHS guidance requires that asylum seekers at land ports of entry be placed in expedited removal and referred for a credible fear interview the study interviewed two groups of aliens, one from the Middle East, the other from East Africa, who requested the opportunity to apply for asylum but were refused and initially pushed back at primary inspection. We became aware of these cases only because in each case that asylum seeker tried to again, on a different day, go through the expedited removal process and subsequently were referred for credible-fear interviews. CBP has stated that it is, quote, "very concerned and dismayed that this is happening contrary to policy and is taking steps to address this."

In summary, I would say in working on this study, we greatly appreciate the need to balance issues of safety with issues of fairness, as the Commissioner so eloquently said, and I think our study is an important reminder that we cannot - we must not forget who we are, a country of immigrants, a country of refugees.

MR. HETFIELD: Now for question three it's Kate Jastram, another one of our experts.

Kate?

KATE JASTRAM: Thanks, Mark. Question three pertains to whether immigration officers are incorrectly removing asylum seekers to countries where they may face persecution or torture, and our findings were that this is not happening at the asylum officer stage. In other words, the credible-fear interview step, which is the middle step, the second step before they get to an actual hearing,

has a very high screen-in rate. There's only 1 percent of asylum seekers that are found not to have a credible fear of persecution, and those asylum seekers are entitled to a review of that decision before an immigration judge. So that's not particularly an area of concern.

Where our findings did indicate cause for concern is more at the immigration judge level, once they actually get to the merits hearing on their asylum claim. And there's just four points I want to highlight for you.

First of all, I want to stress we're looking at asylum cases that originate in expedited removal. There are other asylum cases that immigration judges hear, but we were focused on those that began in expedited removal.

First of all, there's significant variations in approval rates across the country in terms of which asylum seekers are getting asylum, and that's true not only from court to court where it might be explained why different streams of asylum seekers end up in different parts of the United States, but it's also true within courts from judge to judge. There's just a tremendous amount of variation in the grant rates for asylum.

Second point, we looked at a unique feature in asylum cases that originate in expedited removal, which is that there are these prior interviews with the alien, number one at the airport or port of entry, and then number two, the credible fear process. And what we learned is that the judges rely very heavily on these prior so-called statements, but they're actually just records that are made by DHS officers. And we found specifically that their prior records are used to impeach the alien to attack their credibility in 57 percent of all cases, and there were specifically - their prior records are specifically cited by immigration judges in denying asylum in 39 percent of all cases.

And when we looked more closely at the cases where the prior records were specifically cited by the judge as an element of the denial of asylum, we found that in a full quarter of the cases, 25 percent of these cases, the reason that the judge - the basis on which the judge used the prior record, was that the asylum seeker had added detail at the time of the merits hearing, which in fact is logical that the asylum seeker would add detail because these prior records just reflect preliminary screening steps in the process, so it's natural that more detail will come out at the hearing, and yet judges appear not to really fully appreciate the limitations of these prior records and are using them to deny claims. And as observation studies show, those records are not always accurate, so they're incomplete sort of by definition, and then they're not always reliable.

Third point, it really matters whether you have an attorney. Asylum seekers that are represented by attorneys have a 25 percent grant rate. Asylum seekers who don't have an attorney have a 2 percent approval rate on their asylum applications. And that also holds across the board, whether you're looking at a

city that has a very high overall representation rate or low representation rate. So it doesn't seem to just be that lawyers are skimming off the best cases; it seems to really matter whether you have an attorney.

And then finally, once the immigration judge has rendered his or her decision, either the alien or the government can take an appeal to the Board of Immigration Appeals. And what we've found, certainly for our case load, is that the Board of Immigration Appeals is not much help to asylum seekers that did not get a positive decision from the immigration judge. When asylum seekers appeal the denials of their case, prior to 2002 they won their appeal 24 percent of the time. So there did seem to be a thoughtful review at the Board of Immigration Appeals level. However, since 2002, when the Board of Immigration Appeals has implemented streamlining procedures and now can affirm immigration judge denials with just a one-line affirmance without opinions, since 2002, asylum seekers win their appeals 2 percent of the time - 2 to 4 percent of the time. So it's dropped from 24 percent down to 2 to 4 percent. So, again, the Board of Immigration Appeals is not, statistically speaking anyway, a very realistic way for the alien to overcome the negative immigration judge decision.

MR. HETFIELD: Thanks, Kate.

And now for the fourth question we have detention expert Craig Haney. Craig?

CRAIG HANEY: I addressed the issue of whether or not asylum seekers in the expedited removal process were being detained improperly or under inappropriate conditions.

My academic expertise is not in immigration law or in the asylum issue. I have spent many years studying the psychological effects of conditions of confinement; what happens to people when they are confined in prisons and jails in the United States and in other countries.

When I examined the conditions of confinement for asylum seekers, unfortunately the conditions that I encountered were very familiar to me. In virtually every important respect, in the overwhelming majority of facilities that we investigated and examined and surveyed, asylum seekers were being kept

under conditions that were virtually identical to conventional domestic prisons and jails. In terms of the training of the staff who operate the facilities, in terms of the way in which the facilities themselves are physically constructed, in terms of the kind of security which is imposed not just in the external security perimeter but also inside the facilities themselves, in terms of the kind of restrictions of movement that asylum seekers are subjected to, in terms of the invasions of privacy, the asylum seekers' ability to take a shower or use toilet facilities outside of the presence of another person, in terms of the lack of educational and vocational training or other programming opportunities, these facilities were virtually identical to conventional jails and prisons.

In terms of limited access to psychiatric or mental health resources, in terms of the lack of continuing monitoring of mental health care, in terms of asylum seekers' ability to have contact with the outside world, to make phone calls at will, to correspond, to receive correspondence at will, to have contact visits with people from the outside world, all of these things were restricted in extremely severe ways, and ways that, as I have suggested, were jail-like in nature.

Precisely because of what we know about potential for confinement in those kinds of an environment to have negative psychological consequences on people, whoever they are, who are confined in them, we concluded that the kind of confinement to which detained asylum seekers are being subjected appears unnecessarily severe and a matter of grave concern.

MR. HETFIELD: I'll just speak briefly to the issue of whether they're being detained improperly. Expedited removal does require that an alien be detained until he's found to have credible fear, and at that point he may or may not be released at the discretion of the Department of Homeland Security.

What we have found is that there are guidelines that DHS implemented to determine whether or not somebody should be released, or at least has not implemented but guidelines that they have issued. Those guidelines require that the alien establish credible fear, community ties, identity, and that they are not a security risk. If those criteria are met, the Department of Homeland Security is supposed to release that alien and exercise favorable discretion.

What we've found is that this is not happening. We found great variations from city to city in terms of whether or not aliens are being released who meet that criteria. If you are in New Orleans, the odds of you being released are 0.5 percent before your immigration judge hearing, and if you're in Harlingen, Texas, your odds are closer to 97 or 98 percent. And every other city is someplace in between those two. So, again, we found that there are good criteria in place and we found that those criteria are not being evenly

implemented.

And now to go on to the recommendations, I'd like to introduce our methodology expert, Dr. Fritz Scheuren, to go over our first recommendation.

FRITZ SCHEUREN: By way of introduction, I am the President of the American Statistical Association, and was a former senior manager at a number of large federal statistical organizations - operating organizations within the Social Security and the IRS. So I'm going to speak about a couple of organizational issues, and in that context weave in some of the statistical work that we did as part of carrying out the charge that the Commission gave us.

If you are looking at the report itself you might want to go to Recommendation 1.1 on pages 52 and 53. And I'm not going to read the words; they are there for you to read. What I'm going to try to emphasize is what one of the Commissioners, Michael Cromartie, already said, that there is a real need for a high-level official or office that's also authorized to address cross-cutting issues. And my take on this is it's not a staff function. It has to have a line role as well as a staff role. That may not be the way it comes out, but that is my belief.

There needs to be a place where it's visible in the system that the system is fair, secure, and humane, that the system is trying to be fair, secure and humane. That's really important. You get lost in the operating details day-to-day and you need to have someone who emphasizes goals all the time. Now, functionally I'd assign that office, among other roles, the development and maintenance of a modern real-time information system. Statistics is of course the first information science. That recommendation is Recommendation 5.1 on page 61. And again, there's a lot of text there. I'm going to emphasize just a part of that.

In the extensive statistical analyses, which I coordinated or led for the Study, we ran over and over again into these stovepipe computer systems that reflected the stovepipe organizations that existed prior to the reorganization which led to DHS. The efforts to change DHS are underway, but many disconnects still existed - many, many disconnects still existed. There were major barriers to our developing an understanding of this complex subject - truly complex subject. And it turned out in the actual rollout when we actually were presenting our results to the various components of the agencies and sub-agencies involved, that they were learning things about their system from us that they weren't learning from themselves because of the way the structure was created.

In any event, DHS needs a strong corporate information system like large modern organizations everywhere need, and many have, and we want to underline our support for that. There needs to be an added emphasis to this, especially to making it as real time as possible, given the mission of DHS. This role is just so important that it needs to, I think, be brought to this crosscutting organization. And then the legacy systems that exist right now, and the legacy organizations which exist right now, can be - the integration of them can proceed at a greater pace.

Thank you.

MR. HETFIELD: Kate Jastram is going to go over recommendation number two.

MS. JASTRAM: Recommendation number two is an easy one. It's to allow asylum officers to grant approvable cases at the time of the initial credible-fear interview. I like to call this expedited approval because what it would do is identify the strong cases and pull them out of the system early on, and that saves a lot of resources. It saves government money that's otherwise spent detaining people. The average cost of detention is \$85 a night, so if you're detaining people unnecessarily, that's a waste of resources. It also saves time on the court's docket, trial attorney time, and so on and so forth. And of course it reduces hardship on the refugee and lets him or her get on with rebuilding their lives.

It would not be a new role for the asylum officers. This is what they do all day every day in the context of affirmative asylum applications, is make decisions on whether or not to grant asylum. It wouldn't require any legislative change, and it really maximizes the expertise of asylum officers. At present they play this very limited role in expedited removal asylum cases. All they do is this credible-fear screening interview, so it would make a much better use of that resource.

MR. HETFIELD: Craig Haney is going to do recommendation three.

MR. HANEY: Recommendation three really has two parts to it, the first a kind of due process recommendation to the effect that DHS and ICE clarify and consistently apply the criteria for parole of aliens in the expedited removal process so that a minimum number of aliens are actually detained consistent with national security interests.

The second component of recommendation three concerns the nature of the conditions of confinement themselves. We strongly urge that a model of non-jail-like confinement be adapted. And in fact, as you will see in the report and in our discussion of the recommendations, we found one such model actually in operation in the United States in Broward County, Florida, one very distinct and counter-example to the otherwise jail-like confinement in which asylum seekers are being kept. It can be done in a way which is secure, which protects the mental health and well being of the asylum seekers who are detained, and also in a way which is cost-effective. And for those asylum seekers who do need to be detained, we recommend that that kind of model be adopted on a widespread basis.

MR. HETFIELD: Chuck, recommendation four.

MR. KUCK: My recommendation actually is also kind of a two-part recommendation. The first goes directly to the issue of facilitating legal assistance. We looked at the legal - the ability of folks to get legal representation in the expedited removal context is extraordinarily limited because of the conditions in which they are kept, but there are several projects out there, several private-public partnerships that assist individuals in getting legal representation. One of those premier programs is actually here in the capital area, run by the Capitol Area Immigrant Rights' organization, CAIR, in conjunction with the Arlington Asylum Office.

Essentially what Arlington Asylum Office does is give CAIR a call when an expedited removal case comes in that they believe could benefit from speaking with somebody with some expertise in asylum, and a lawyer will then be assigned - a pro bono counsel will be then assigned to talk to that alien. And what's been remarkable is this has resulted in a higher increase in withdrawal of asylum cases here in Arlington and in other parts of the United States, thus reducing the workload not only of the asylum office but of the immigration courts and the number of people being held in detention facilities here in the Washington, D.C. area.

The second part of the recommendation is to increase the consistency of immigration judge decisions around the United States. One of the interesting parts of the Study is looking - in comparison to the affirmative asylum decisions made by the asylum office and the - what we typically call the defensive decisions made by the immigration judges - people that are applying for asylum in front of them in the expedited removal process.

While approval rates are essentially the same, being slightly higher for asylum officers than they are for the immigration judges - both waver around 25 to 30 percent -- for individuals in some courts however, that approval rate can be two percent and in other parts of the United States, that approval rate can be 60 percent. But more startling is the difference within immigration courts themselves, where you have some courts in the United States with 10, 12, 15, 25 judges with approval rates for basically the same case load running from two percent to more than 60 percent. So we're calling for a more consistent approval by immigration judges, which of course requires the folks at the Department of Justice and EOIR to provide increased training and information to immigration judges to go out and provide more consistent decision-making to these folks.

MR. HETFIELD: Then Dr. Keller, the fifth recommendation?

DR. KELLER: This recommendation focuses on quality assurance procedures at ports of entry. The Department of Homeland Security should implement and monitor quality assurance procedures to ensure more reliable information for Homeland Security purposes and to assure that asylum seekers are not turned away in error. I should note in doing this Study, we were truly granted unprecedented access at the ports of entry to observe the secondary interviews, to review the charts, and also to interview the aliens. And these methods as well as our findings specifically lead us to recommend the following.

First, to reconcile conflicting field guidance to require that any expression of fear at the port of entry must result in either a referral for credible-fear determination or in cases where the inspector or border patrol agent believes that the alien would "clearly not qualify" for asylum or CAT relief, that contact with an asylum officer be made to speak to the alien via a telephonic interpretation service to determine whether or not the alien needs to be referred.

Second, improve quality assurance for expanding and enhancing the videotape systems currently used in places such as Houston and Atlanta to all major ports of entry and border patrol stations to unobtrusively record all secondary interviews and to review a sample of these tapes, and consider employing the use of undercover "testers" as is done in other places at the airport for security testing to verify that Expedited Removal procedures are being properly followed.

Third, include on sworn statement form I-867B an explanation of the specific purposes for which the document is designed to serve and its limitations. As our Study found, there were inconsistencies between what was observed to have been said and what ultimately ended up on the forms. And these forms followed the individuals all the way through their process.

And finally, enhance the efficiency of the Expedited Removal process by amending DHS quality assurance procedures for the credible fear interview to subject negative and positive determinations to similar quality assurance procedures.

MR. HETFIELD: Thanks, Allen.

This Study has provided temporary transparency to expedited removal, a process which is opaque, not only to the outside world but even within the Department of Homeland Security. As a result of this transparency, serious but not insurmountable problems with Expedited Removal have been identified. And I might add that all of the solutions that we recommend do not require any legislation but do require action by the attorney general and by the Department of Homeland Security. And it's our hope that with a new attorney general and with -- soon to have a new Homeland Security secretary, that they will seize this opportunity and take these recommendations seriously.

We would also ask that one thing that the Congress do is require the Department of Homeland Security and the attorney general to report on their progress or on their take on these recommendations and our findings. I'd like to open up the floor to questions. Yes?

Q: (Off mike) - the region from where these asylum seekers are coming or the nationality or ethnicity of them influence the outcome of the decision at the - either at the immigration judge level or the initial asylum officer level? So in other words, is there any proof or anything of discrimination or other criteria like that?

MS. : There is - in terms of immigration judge approval rates, yeah, there is a great deal of variation based on country of origin. And also in terms of - not so much at the credible fear screening level because almost everybody who is found have credible fear, but certainly if the immigration judge, the actual decision level there's a lot of variation, I would refer you to the report itself because we have a lot of tables about that. But I also wanted to mention in the context of parole decisions, the releasing of people before their merits hearing, there's also variation based on basically country of origin.

MR. HETFIELD: Yeah, and I would also add that if you look at the EOIR section of our report which relates to immigration judges, yes, of course, you have variations in approval rates based on nationality, but interestingly when we compared approval rates to nationalities in different courts, we saw dramatic differences. In other words, Chinese asylum seekers would be granted -- would have very high grant rates in one court in one part of the country, very low grant rates in other parts of the country. And we did the same thing - we did the same analysis with Haitians, Colombians, and Chinese. Yes?

MR. : (We've been to that ?) four of you, you have been months studying

this. It's evident from hearing it. But one thing that makes me difficult to understand what you're saying is that you didn't mention the countries where these people come from. So if you tell me that they come from Mexico, it's different coming from North Korea or from China.

Now something else you were talking about jails and the condition of jails. One of the things we have heard recently is that in many places, al Qaeda is making recruitments. And another thing that I think it's extremely important that you consider is that all these officials -- immigration officials have to deal one way or another with the enormous amount of gangs that we have in this country and you read about that almost everyday. And as to conditions in prison also and their psychological impact, this depends of course on the individual. And generally speaking, I would back all the suggestions you are making provided that this is taking care of all by non-governmental institutions; that is to say we should not place the financial burden of this on our government, and of course when - I was delighted to hear Bishop Ramirez and I think these -- they help. They can provide immense - but let us not be too romantic about this and think of the actual situation we are facing.

MR. HETFIELD: And I think that's exactly why we don't come out against expedited removal. We find that expedited removal could be a secure process because it does require asylum seekers to be detained until they establish not only credible fear, but also that they're not a security risk, that we know who they are, and even if they have community ties -- meaning that some organization or sponsor - not the government - will take care of them, and make sure that they stay in the vicinity and don't abscond. So any other people want to comment?

MR. : I think it would be a mistake to equate security with deprivation and harsh treatment. The two are not the same. We did not come out categorically against the detention of some categories of asylum seekers in the course of the process by which their asylum claims are being adjudicated.

What we have recommended is that needlessly severe deprived conditions of confinement be modified in ways that are consistent with security. The security of the United States of course is dependent upon the security perimeters of those facilities and within the context of keeping those facilities safe and secure. It's possible to do as Broward County is doing: treat people in a humane way that does not create the risk that those people will deteriorate during the period of time that they're confined. And that's what our suggestion was aimed at; not necessarily in consistent with anything you said either. But I want to clarify that this is not a tradeoff between security and treatment. The two things can be done simultaneously, good treatment and safe security.

MR. HETFIELD: Kate?

MS. JASTRAM: Thanks. Just in terms of the U.S. - a question about where asylum seekers are coming from, what countries. Of course asylum seekers come to the United States from all countries. I mean it's a basic human right that anyone can seek asylum, and you know, that's why we have a process to determine which claims are valid. But the top four countries in terms of producing asylum seekers in the United States are China, Colombia, Haiti, and Cuba. So these are the countries that numerically speaking are most represented in terms of asylum seekers.

MR. HETFIELD: Fritz?

MR. SCHEUREN: Yeah. I know you want to say a little more sir, but first of all, there really are two volumes to this report. Volume one is the one that you got when you came in. There's a second volume, which is extensive, a statistical tabulation. In great detail - the first two speakers asked about it - great detail about country of origin, not just the major countries which Kate has mentioned, but many, many others. And that's available to you on the Web. I think it's on the Commission website.

MR. HETFIELD: Okay. And finally, Allen?

DR. KELLER: Again, I think one of the important things that we found in our observations at the airport is that there are good systems in place and that when those systems are followed, appropriate referrals are generally made. So what we're emphasizing is to follow those systems, to follow those. And this goes down the line, including with detention that when appropriate issues concerning identity, risk of security and things like that, have been met, individuals can and should be paroled. It's important to remember that asylum seekers may well be individuals who have fled persecution, torture, other traumatic events, and that should not necessarily, should not be treated as criminals.

MR. HETFIELD: Yes, John?

MR. SALZBURG: John Salzburg, Center for Victims of Torture. I would like to ask Dr. Keller a couple of questions. To what extent in your study of the expedited removal process have you found that torture victims are especially vulnerable to unfair or mistaken treatment, both in terms of the process of applying for asylum as well as the situation of detention? To what extent are mental facility - treatments available to torture survivors who are in detention? Finally, the administration as well as the Congress has said that there's at least 400,000 victims of torture in the United States. To what extent, once it has been determined that a person is a torture victim and is granted asylum, to what extent are they referred to appropriate treatment services and to what extent do you believe there are adequate facilities for treating torture victims in this country?

DR. KELLER: In our study, we focused on the expedited removal process for individuals, including potential torture survivors, so we didn't necessarily focus particularly on torture survivors. And clearly survivors of torture and other asylum seekers, it's essential that the process be fair and that individuals be appropriately referred for credible fear determinations and appropriate asylum procedures. With regard to services for survivors, as you know there are a number of specialized centers throughout the United States that care for victims of torture and with variations facilities - detention facilities

that they refer to these, and they serve as important resources. I should acknowledge I'm the Director of one such center in New York City, the Bellevue NYU Program for Survivors of Torture. With regard to the mental health impacts of detention, I'll defer to my colleague, Doctor Haney.

DR. HANEY: We did address the issue of mental health impact of confinement in jail-like settings in general and including for asylum seekers in the Expedited Removal process who were detained. As to the specific question you asked about whether or not any specialized treatments are available for the sufferers or survivors of torture who are confined in these facilities, the answer is no, not in any general or extensive way. Most of the facilities that we surveyed provided some form of mental health screening as people entered the facility. Where they varied widely however was in terms of the amount of mental health resources or care available after that, after that initial screening. I should say we made no judgment about the quality of that initial screening but simply whether or not a screening took place.

And then we looked at whether or not there were mental health services available to people once they were there. In virtually every one of these facilities, the detainees themselves had to request mental health services. In only a very, very few instances was there any semblance of continuing mental health monitoring of the people who were confined there. Now to the extent to which someone was suffering from torture or some other form of trauma as we have every reason to believe at least some percentage of asylum seekers have suffered, very little was being done to identify those problems in a proactive way once people had been incarcerated in one of these facilities.

MR. HETFIELD: Yes?

MS. : (Off mike) - recommendations to have on promoting international religious freedom?

MS. GAER: The fact that this study was assigned to this Commission was not specifically related to the fact that the Commission's mandate dealt with religious freedom. However you cannot realize and enjoy religious freedom if you don't have other human rights. And if you are - if somebody is seeking asylum on the grounds I've listed - that long list of issues: race, religion, political opinion etcetera - if a person is seeking asylum, the system has to work for all asylum seekers if it's going to be able to work for a person seeking asylum on grounds of religious persecution. So the impact I think is obvious. If it works for everybody, it will work for a person seeking religious freedom. And we certainly found that there were denials in cases where one would have expected that they would have gone forward, but that's all in the data and the big Study for you.

MR. : Your statistics show a drop across the board in people being - number of aliens inspected and removed from pre-9/11 to post-9/11 and to the extent that this was part of the study, can you say how much of that is attributable to people being less willing or to risk traveling here in post-9/11 as opposed to greater efforts by, let's say, this government and perhaps other governments to keep people from getting on the planes in the first place?

MR. : I'm glad you asked that question because it is actually beyond the scope of the study, insofar as we're only supposed to look at expedited removal, meaning when the asylum seeker actually lands here in the United States. But in our introduction or in the Commissioner's introduction, they actually do specifically call for a study on that very issue. We did note that there was a significant drop in the number of aliens arriving in the United States and an even more significant drop in the number of asylum seekers arriving here. And we don't know how much of that has to do with consular activity, how much of that has to do with homeland security activity overseas, pre-flight inspections and what not, but what we did find is that - what we did note is that there is a mechanism overseas to refer people with a fear of persecution to the U.S. Refugee Program for screening overseas.

And the consular officials do have the authority to make those referrals, and the same legislation, which created the Commission, the International Religious Freedom Act actually requires that consular officials be trained in how to do this. We found that that training is not occurring right now and we do recommend that study take place as to why it's not occurring, even though it's required by the law and what is the cause of this drop in arrivals of both aliens as well as asylum seekers. Yes? Oh I'm sorry, Bishop -

BISHOP RAMIREZ: Go ahead. I'll do it after you.

MR. : Santo - (inaudible) - I'm an immigration agent out of Denver, Colorado. Did the Commission take into consideration the absconder ring and the problem that the Department of Homeland Security has now locating those absconders, which many of them are false claims to asylum as instance the recent Haitian General which we removed for lying on his asylum application. And also, did, in your expedited approval process that you're proposing, what safeguards are being recommended to protect the integrity of the process?

MR. : Okay. That's a good question. We do actually have statistics on the abscontion rate. It's not exactly an abscontion rate, but we did a percentage of decisions issued by immigration judges based on a failure to appear. And what we've found is that 22 percent of asylum seekers who are released, do not appear for their hearing. And it's interesting when you take Sri Lankans out of the mix, that number actually drops to 15 percent of asylum seekers who do not appear for their hearing. And that is - our understanding is it's because many Sri Lankans do in fact intend to go to Canada, view the U.S. as a transit country, and that's why they don't appear for their hearing.

But we agree with - obviously one of the criteria in terms of deciding whether or not to release an asylum seeker is their unlikeliness to abscond, which is a difficult determination to make. What we did find is that in the files we examined that ICE gave us, it was really very difficult to determine why they released an alien or why they detained an alien. They were very poorly documented, and there was no form or information in the file, which makes it clearly apparent as to again, why they released or why they detained. So, one of our major recommendations regarding detention is that they need to document the thought process in the file and the criteria for deciding whether or not somebody is likely to abscond. Because you're absolutely right. If somebody is likely to abscond under the rules, they're supposed to be detained until they're immigration hearing. In terms of the expedited - you want to speak to the expedited asylum process, Kate?

MS. JASTRAM: Sure. I mean this suggestion or this recommendation to have asylum officers approve at that initial interview would be very similar to the affirmative asylum process in which there has to be a security check. We're not saying let them walk out of the detention center that day because there still needs to be that process of doing the security clearance, but as it is now in the affirmative context, asylum officers are adjudicating cases where people entered without inspection entirely or people entered successfully on a false document. It's not a different case load for the asylum officers to be dealing with and the same security procedures would be in effect.

MR. : Bishop Ramirez?

BISHOP RAMIREZ: Yes. I just wanted to - that we consider what we are presenting today, both the Study and the reports and the recommendations as the first of other building blocks. This is just the beginning of what we hope will be a further study. This is an open-ended study. This is an open-ended report. The questions for which we try to find answers gave rise to new questions, such as a question of the decrease of the number of asylum seekers at our ports of entry. So we feel that this is really the first of other building blocks, and we hope that this work will continue. We have accomplished our task, but then this gives - opens the door for further study on some of these matters.

MR. HETFIELD: Charles Kuck wanted to address the absconder question as well.

MR. KUCK: I think that is an excellent question on the absconder rate because that's obviously a matter of great concern for the United States. If people aren't appearing for their hearings, particularly if they're an asylum seeker, then the implication is they lied to get in the United States just to get here. This goes to actually, one key part of the study where we found a gross inconsistency in parole rates around the United States, where in New Orleans - if you arrive in New Orleans, you simply are not going to get out of jail. You're going to stay in detention through your entire immigration core

process. But if you were arriving in Harlingen, you are definitely going to get out of jail.

That is not a proper and secure way to run a parole process in the United States. Where you land in the United States, like the board game Mark referred to, should not depend on your likelihood of getting out. It must - the service ICE must improve their ability to properly document and use the criteria for releasing people, which they clearly are not doing now and really now, apparently relying on their ability to fund detention. And if they can't fund it, folks now are released. And that's a concern. If it requires us to increase our detention funds, Congress should do it. If it requires them to broadly implement the actual criteria and properly implement the criteria for release, they should do it. But the current system as it works on absconders is clearly a problem.

MR. : One more question, yeah?

MR. : If I could address that real quick. If you happen to look at the detention facilities themselves, I've been to both facilities. I've worked in them. The reason that someone is more likely to be released in Harlingen as opposed to New Orleans is because of the vast amount of people that come through the Harlingen port of entry whereas New Orleans does not see 800 Brazilians in two hours, which happened to me at one point. And I have another question to ask as far as the detention facilities - remember your committees had indicated that there was inconsistency in the detention facilities, but could you tell us, what is the breakdown as far as private contracts and government run facilities because there is a difference between the two?

MR. KUCK: I'm going to just address the brief issue on the facilities themselves and the number of folks. Our study looked at the folks in expedited removal process, so we didn't look at the general release rates. The rates we gave you are actually for folks in expedited removal, their likelihood of getting out of those particular facilities. And yeah, we did look at the actual facilities themselves and the workload they had. That still doesn't account for a five percent hold rate on folks that are in the exact same legal situation as folks in Harlingen. The service has for decades transferred people to other facilities around the United States. It's built in the federal budget to transfer people to other facilities. If they don't have the facilities locally,

they either need to build them because they need them or more likely, contract them out. If their contracting out facilities in Tennesaw (ph) Parish, Louisiana where nobody comes into the United States, why don't they contract their facility in Harlingen instead? What we're pointing out in our study is the gross inconsistency and it should not be inconsistent. There should not be unequal justice depending on where you came in the United States. And again, the process works if properly done. Craig?

MR. HANEY: Let me give you the statistics on the breakdown. You may well know this, but nearly half of the detained asylum seekers are held in government-run facilities, service processing centers. About a third are actually confined in existing jails, state or federal jails, so when I say that there's a stark resemblance between the facilities where asylum seekers are held and conventional jails, in a third of the cases, there's a literal consistency. They're actually held in areas within conventional jails. About one in five asylum seekers are held in a private contract facility the government has contracted with private companies that run detention centers. And this roughly approximates - those are the overall figures. They're roughly reflected in the 19 facilities that we concentrated on in our survey, so that we had roughly the same equipment. We didn't find dramatic differences between facilities as a function of whether or not they were run by the federal government, local jails, or contract facilities, except as you would expect the local jails tended to be somewhat more severe in their treatment of the asylum seekers. What the variation that we found, oftentimes is seemingly inexplicable and let me give you an example, which we point out in some detail in the study. In some ways, one of the most severe facilities that we examined, a facility that operates in Queens, New York, and in virtually all respects, the best facility that we examined, the Broward facility that we referred to earlier, are both contract facilities - both contracts which the government holds with the same private company. So one facility is being run as severe or more severe than the jail-like conditions that I've described and the Broward model is being run on this non-jail-like model that we recommended, both run by the same company under a contract with the government. Our suggestion was that in - as I said earlier, the Broward model be the one that would be adopted. But it was not easy for us to break down better and worse as a function of who was running the facility.

MR. : Yes?

MR. : Have you come to any determination why there was such a high success rate in that, for asylum seekers in that particular town in Texas and the same

for the jurisdictions that had the lowest rate? And are there any concerns about making known publicly the wide discrepancies where for example, you mentioned that Chinese are given asylum and another is they're not. For example, could there be Chinese communist agents improperly influencing government agents as was made known during the Clinton administration? And have you made any determination if race is playing a role in particular for asylum seekers from Haiti? And is racism or religious discrimination an explanation for the wide discrepancies, area-to-area?

MS. : I think I need, first, to clarify - we didn't really talk about approval rate, the Harlingen and New Orleans examples of .5% and 99% -- those were not - sorry? - yeah, those were parole rates, those were not approval rates. And so presumably, they relate to available bed space and so on and so forth. The approval rates do vary all over the country but as - in the study itself, there's a lot of tables that explain that. I'm trying to remember some other elements of your question. In terms of publicizing the variations in the parole - in the approval rates - you know, to some extent - to the extent that people are being smuggled into the United States, the smugglers are already aware of variations. You know, there are places where people can enter that they're less likely to be detained - again, presumably because of bed space and so forth - but, basically it's our hope, in terms of publicizing the variations in the rate - is that there will be greater attention paid to the need to make this more consistent, because there really - it's hard to speculate why there would be such variations, you know, in the approval rates.

DR. KELLER: Yeah, just to add to that, if you look at the statistics in here, we note that Los Angeles changed - the INS office in Los Angeles changed. They used to release most aliens and they went to a policy - and when they released most aliens, they were getting - I think they were the second-largest port of entry with the second-largest airport, in terms of their asylum seekers arriving there. When they changed their policy from releasing most aliens to detaining most aliens, the number of asylum-seekers arriving there dropped by 90% in the course of twelve months. So again, the information is already out there, in terms of which ports have more lenient police policies and which ports have more restrictive police policies. Yeah?

Q: James Barnett, under the national INS Council. Question - you've identified some problems with the ports of entry - to what extent do you believe that the problem is associated with the new Department of Homeland Security's One Face at the Border Initiative - and the change in the training and the inadequate training that the CBP officers are currently receiving?

Thank you.

MR. : Yeah, I mean that, I think, goes to our number one and our overriding recommendation - is that with the transfer - there were obviously a lot of problems under INS - but now with DHS, you have a whole new set of problems. And you have - not only do you have all these different actors in expedited removal, who don't really talk to one other - meaning ICE and then the components in CBP - Border Patrol, Inspections, not to mention USCIS - and I might want to add, not only do they not talk to each other or communicate, but if they have a controversy that they have to resolve, the only place in the department where they can resolve that controversy, is in the office of the secretary. Those pieces do not come together anywhere, except for the office of the secretary - so Tom Ridge has to resolve every single dispute among those different agencies, which have to work together. So we did find that to be a problem and at the same time, while we didn't look at it, we have to admit it is - immigration law - is overwhelmingly complex, and then to expect inspectors to not only know immigration law and procedures, but customs law and procedures and agricultural law and procedures, would make it, I think, very difficult to implement some of the recommendations we're making, because you have to have expertise in three separate areas. So anyone else want to speak to -

DR. KELLER: You know, I would just add - I mean, clearly one of the things we learned in doing this study is this balance and attention between the dual roles of, you know, the customs and border patrols at the front lines, between protecting our borders and also between ensuring that individuals who, you know, may have a fear are appropriately referred, clearly, training is a crucial element of that and we recommend - and CBP is already doing - training - some training - and it should be commended. And we think it needs to be expanded. A training program such as those that the asylum officers receive, I think, are important models to look at.

And then finally I would say, you know, we need to ensure that there are quality assurance procedures in place to follow those guidelines that are already there, in terms of, you know, information appropriately being provided at the ports of entry, such that if an individual has a fear of persecution, they know that there is a means for them to state these fears, and some quality assurance about, you know, exactly what is happening.

MR. : You had a follow-up or -

Q: Dr. Keller, in reference to your dealing with communication and finding out that certain questions were not asked, made me wonder how many times were we going through an unqualified interpreter. I was a former inspector, I dealt with whoever we could find that maybe spoke that language, we brought in to work as an interpreter, so therefore, they didn't understand the nuance of the word "shall" or "must" or "am" or "maybe." And so how much did that have a play in the results of your findings?

DR. KELLER: Right, we actually found that interpreters, as a general rule, did appear to be provided. Also, many of the officers were bilingual. Our basis of when questions were not asked was on the matter of that we had an observer in the room - sometimes we even had two observers in the room so that we had some inter-rater reliability - and that the question was clearly observed - or questions about fear or, more commonly, information about that if one is afraid of persecution, there is a means to let this be known, were not being provided. And again, as was noted as a matter of concern, there were inconsistencies between what was observed - that is, it would be observed by our staff that the question or the information was not provided - but that when the record was reviewed, it said that it had been.

MR. : Thanks, okay, we need to close. Any final questions? Okay. Oh, sorry, yes?

Q: What type of reception are you getting out of Capitol Hill, with regards to reports - specifically, were you approached to delay the release of this report?

MR. : We did provide briefings on Capitol Hill to various different committees and sub-committees on our report. We were in discussions, as far as the timing of our report and the release date. The report itself had been planned to be released for almost two months at this point, and we were very concerned that the information that we provided get out there as quickly as possible, so that we could provide a means whereby both the DHS and other government agencies, including Congress, can act on our recommendations as quickly as possible.

(Applause).

MR. HETFIELD: Thank you for coming.

(END)